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Fifteenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 244th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 November 1995, at 11.30 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.244.

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GE.95-14600 (E)

The public part of the meeting was called to order at 11.30 a.m.

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE (agenda item 7) (continued) (CAT/C/XV/Misc.3)

1. The CHAIRMAN reminded members that a small working group had been set up to discuss the proposed amendments to the rules of procedure of the Committee.

2. Mr. BURNS said that the group's mandate had been to produce rules of procedure pertaining to articles 19, 20 and 22 which would reflect the decision reached at the last session and restated earlier in the current session. The new rule relating to article 19 would appear after rule 66 and would read:

> "1. Members of the Committee will not participate in the proceedings relating to the examination of a State report whilst the representatives of the reporting State party of which they are citizens or nationals are present."

3. Mrs. ILIOPOULOS-STRANGAS said she had difficulty in understanding the purport of that text. It appeared that when a State presented an oral report, members of the same nationality could not participate in the ensuing discussion. If that was in fact the case, it appeared to represent a new development, as such members had not previously left the room during discussions of that nature.

4. The CHAIRMAN said the rule did not mean that any members would leave the room; they would simply not participate in the discussion.

5. Mrs. ILIOPOULOS-STRANGAS asked whether that idea could be phrased in a more precise manner.

6. The CHAIRMAN said that during the previous discussion of the question the verb "withdraw" had been used. The new rule simply stated that a member would remain in the room, listen to the debate but not participate in it.

7. Mrs. ILIOPOULOS-STRANGAS suggested that it might be clearer if the words "will not take part" were used.

8. Mr. EL IBRASHI said that the words "not participate" were widely used within the United Nations system. There was a great difference between withdrawing from the meeting room and not participating in the debate. Under article 19 a distinction was drawn between two situations. If a national delegation was present, a Committee member of the same nationality could not even take part in procedural or technical discussions. However, once the delegation had left the meeting room, the member could participate in the discussion but only on procedural and technical matters.

9. Mr. BURNS read out the other paragraphs of the rule relating to article 19:

> "2. All members of the Committee are entitled to participate in the proceedings of the Committee, other than those referred to in paragraph 1 above, so long as the participation is related to procedural or technical matters.

3. Members of the Committee referred to in paragraph 1 will not participate in proceedings of a substantive nature.

4. In any event, if members of the Committee consider that they cannot participate in any part of the proceedings for any reason, they shall notify the Chair accordingly."

10. He then read out the new rule relating to article 20, which would appear before rule 75:

"1. All members of the Committee are entitled to participate in the proceedings of the Committee unless they are citizens or nationals of the State party under examination, or if for any other reason a conflict of interest exists. In such a case, participation is confined to procedural and technical matters.

2. No member of the Committee referred to in paragraph 1 will participate in proceedings of a substantive nature.

3. Any question which may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned."

Paragraph 3 was a restatement of rule 103, paragraph 2, of the rules of procedure.

11. Mr. EL IBRASHI suggested that paragraph 4 of the new rule relating to article 19 should be included as paragraph 4 of the new rule relating to article 20.

12. Mr. BURNS agreed.

13. Mrs. ILIOPOULOS-STRANGAS, said that while a member's nationality was a straightforward fact, a potential conflict of interest was not, and wondered who would be responsible for ascertaining whether such a conflict existed.

14. Mr. BURNS replied that paragraph 3 of the new rule relating to article 20 made provision for that eventuality.

15. Mrs. ILIOPOULOS-STRANGAS observed that either a member would consider a conflict of interest existed and would notify the Chair accordingly, in which case paragraph 4 of the new rule relating to article 19 could apply, or he would not consider such a conflict existed. She did not think there was any reason to include the reference to conflict of interest in paragraph 1. There could be conflicts of interest that nobody else was aware of; it was for individual members to notify the Committee if they did not wish to participate. The Committee did not have the right to raise ex officio the question of a conflict of interest for one of its members, and she wondered where such a procedure could lead. Members were independent experts; she believed that if a conflict of interest arose, the member concerned would duly notify the Committee.

16. She suggested deleting the provision in paragraph 1 relating to conflict of interest, and incorporating paragraph 4 of the new rule relating to article 19, which would allow members who had any questions of conscience, not necessarily restricted to conflicts of interest, to notify the Committee of their non-participation.

17. Mr. BURNS said he understood Mrs. Iliopoulos-Strangas' view to be that, pursuant to article 20, if a conflict of interest appeared to arise vis-à-vis one of the Committee members effecting the objectivity of the discussion, and if that conflict was known to another member of the Committee, he would not be entitled to raise it. He did not agree at all with that proposal. If a member of the Committee was aware of an apparent conflict relating to one of his colleagues, he would be duty bound to raise it, for if he did not, the whole procedure would be brought into disrepute. The assumption within the Committee was that members behaved honestly and with integrity in pursuance of the principles and objectives of the Convention. Unfortunately, that was not always the case in all institutions and thus safeguards were routinely established. The principle was already incorporated in one of the Committee's rules (rule 103), and the rules currently under consideration were simply being modelled on that rule.

18. Mrs. ILIOPOULOS-STRANGAS said that she had always been against different rules for different procedures. In her view, article 21 should be dealt with in the same way as articles 19, 20 and 22. Independence and impartiality should be guaranteed for all procedures equally. In a case of conflict of interest, it was a member's legal duty to withdraw, not simply an act of courtesy. The Committee would be losing sight of its mandate and would be questioning its independence and impartiality if members had to indicate a conflict of interest to one of their number. She would agree to a general clause, if members considered it necessary, but not to a different one relating to each article. The Committee had faced delicate situations in the past, in particular during its previous session; she did not believe that the inclusion of any specific article would have proved helpful in solving that problem.

19. The CHAIRMAN suggested that the term "conflict of interest" should be replaced by the term "conscience".

20. Mrs. ILIOPOULOS-STRANGAS observed that conscience was a personal matter and that it would be purely for the individual member to voice it.

21. Mr. EL IBRASHI pointed out that if the term "conscience" was used, paragraph 3 of the new rule relating to article 20 could not be applied as the Committee would not be able to decide on a question of conscience; the paragraph would therefore have to be deleted.

22. Mr. SLIM invited members to consider rule 103, paragraph 1 (a), which used the term "personal interest". He considered that to be a clearer term and could not really understand why the term "conflict of interest" should be used. If a member of the Committee had a personal interest then he or another member could draw attention to it and the member concerned would consequently not participate in the debate.

23. Mr. GIL LAVEDRA asked how paragraph 1 of the new rule relating to article 20 would read following the amendments.

24. The CHAIRMAN replied that the clause "if for any other reason a conflict of interest exists" would be replaced by "if he has any personal interest in the case".

25. Mr. GIL LAVEDRA asked whether that would mean that if a member had no personal interest he could participate in proceedings of a substantive nature. If that was the case, he did not agree.

26. The CHAIRMAN pointed out that paragraph 2 provided that a member could not participate in such proceedings. After a discussion of various terms, Mr. Slim had proposed the term "personal interest", which he considered to be a good solution.

27. Mr. YAKOVLEV suggested that the problem might relate to the interpretation of language. He had a personal interest in each case under examination, but it coincided with serving the objectives of the Convention in the best possible way. There was nothing inherently wrong with the term itself; problems would arise only if a member's personal interest was in conflict with the objectives of the Convention. He thought the term was well established in legal practice.

28. If a majority of members were against using the term "conflict of interest", he would not oppose them. If, however, the Committee preferred the term "personal interest", he would be in agreement if it related to personal interest in conflict with the interests of objectivity.

29. Mr. BURNS noted that the discussion reflected the deliberations of the drafting group. It had initially been thought that there was no reference to conflict of interest in the rules of procedure, but one had then been found in rule 103. Perhaps it was rule 103 which Mrs. Iliopoulos-Strangas really objected to as that rule gave the Committee automatic jurisdiction to intervene in what she perceived to be the inherent functions of the individual members of the Committee. He would not object to the deletion of the provision relating to actual enforcement as in the new rule relating to article 19 no enforcement mechanism existed and it was left to the individual and the Committee to decide how to resolve the matter. He would not object to the same principle applying to articles 20 and 22 and thought that might resolve the problem confronting the Committee. He urged members not to concern themselves excessively with the term "conflict of interest". As Mr. Yakovlev had accurately stated, that term was a generic one, and it incorporated the two specific illustrations included in rule 103. He suggested that paragraph 3 of the rule relating to article 20 should be deleted.

30. Mrs. ILIOPOULOS-STRANGAS observed that the Committee was not a court and therefore it was not for members to decide collectively whether a conflict of interest existed. It was usually the State party or the author of a communication under article 22 who could object to the participation of a Committee member. She wondered whether other bodies existed where colleagues

could question one another's impartiality, independence and conscience. In her view, it would be a delicate and dangerous situation if members could question one another in that way.

31. Mr. EL IBRASHI said he preferred the use of the term "conflict of interest" to "personal interest", which touched on the question of the credibility of members. Conflicts of interest could occur and the expression was a widely used one.

32. He voiced his agreement with Mrs. Iliopoulos-Strangas: if paragraph 3 remained as it was, the Committee would indeed appear to be a form of court. It was not within the Committee's jurisdiction to take decisions on whether or not experts had personal interests or conflicts of interest. If a member considered he had no personal interest and another considered that he did, the member's credibility would be at stake and he would have to leave the room and perhaps even leave the Committee. As Mr. Burns had suggested, the best solution was to retain the expression "conflict of interest" and to delete paragraph 3, thus leaving it to members themselves to decide.

33. Mrs. ILIOPOULOS-STRANGAS wondered why a phrase such as "if a conflict of interest exists" should be included, because even if one did exist it was not justiciable, as the Committee was not a court. It would be better to include a general clause relating to individual conscience. If a member were to present reasons of conscience, those would undoubtedly relate to a conflict; if there was no conflict, there would be no problem of conscience. It was for the member himself to judge. He could say he had reasons not to participate, but did not necessarily have to name them.

34. Mr. GIL LAVEDRA said he wished to repeat his position on the whole question, which had already been discussed at the previous session. He did not agree with the substance of the amendments under consideration. In his view, there should be no doubt whatsoever about the impartiality of the Committee and therefore only the question of nationality should cause a member not to participate. That original rule of the Committee had seemed a wise one. Other members were not in agreement with him, however, and thought the rule should be changed. In order to safeguard consensus he would agree to amending the rule, but appealed to members not to alter paragraph 3 to such an extent that it would practically disappear. That paragraph gave the Committee the possibility to take a decision in the event of a challenge. It was not only a member who could invoke a conflict of interest, but also the State concerned and the author of the communication. It was the Committee that would decide in those cases, and it would obviously take that decision without the presence of the member under challenge. The rule appeared to him to be very clear and he stressed that he would always be in favour of provisions which best ensured the impartiality and honesty of the Committee. He reminded members that it was not they personally who were under discussion; they were endeavouring to establish a permanent abstract rule for the Committee.

35. Mr. SLIM asked whether other committees adhered to any specific rules or practice on that question. In his opinion, there were two options before the Committee. The first was not to accept the questioning of the impartiality and objectivity of the members of the Committee. He favoured that solution, as outlined by Mr. Gil Lavedra. The second option was to open the door to the

possibility of questioning the impartiality and objectivity of a member of the Committee, and in that case rule 103 would be appropriate, and would also provide a safety-valve. He stressed the importance of having a safety-valve to provide the Committee with direction as to how to deal with cases where members' impartiality and objectivity were called in question.

36. Mrs. KLEIN-BIDMON (Centre for Human Rights) said that article 20 of the Convention, with its procedure for investigation of allegations of systematic torture, was unique and therefore no similar rules existed. With regard to communications, she explained that the Human Rights Committee had a similar rule providing that the member concerned would abstain from participating in the examination of a communication. Concerning the examination of reports, that Committee adhered to the practice that a member from a country whose report was under examination would not participate in the debate, but no specific rule existed; that practice could therefore change at any time. In fact, it was not always adhered to in other committees.

37. Mr. SORENSEN expressed satisfaction with the acknowledgement that article 20 was a special provision and therefore required special rules. He was entirely in agreement with that view.

38. He associated himself with Mr. Gil Lavedra's comments relating to the substance of the amendments. In his view, members of the Committee should not only be impartial but they should also demonstrate to the whole world that, in dealing with the grave questions before them, they were taking the question of impartiality very seriously. If the Committee adopted the new rule relating to article 20 as it stood, that was what it would be doing. He wondered whether a majority of members wished to delete paragraph 3.

39. Mr. BURNS considered that it was time to reach a consensus. He expressed his agreement with Mr. Gil Lavedra's position but noted that unfortunately that position had been lost at the previous session and therefore new provisions must be adopted. In his view, there was little difference between retaining or deleting paragraph 3. As Mr. Gil Lavedra had said, if paragraph 3 was left out, it would be the Committee that would decide if the question ever arose, and if it was left in, it simply formally stated that the Committee would take the decision. He inquired how many members wished to retain paragraph 3.

40. Mrs. ILIOPOULOS-STRANGAS pointed out that she had not yet had a reply to her question why any distinction should be drawn between articles 19, 20 and 22. She fully agreed with the views of Mr. Gil Lavedra but none the less considered that the same solution should apply to the procedures under all three articles.

41. Mr. GIL LAVEDRA explained that the Committee needed different rules because the three articles covered different situations. The question of a conflict of interest did not arise under article 19.

42. Mr. SORENSEN added that the rules were different: under article 19, a member could not participate at all in a public meeting but could participate, if he wished, in procedural and technical matters in closed meetings. As

Mrs. Klein-Bidmon had stated, no committee other than the Committee against Torture had an article like article 20 and, because of its special status, different rules were needed.

43. Mrs. ILIOPOULOS-STRANGAS pointed out that if the Committee had different rules for each article or procedure, even where a conflict of interest existed a member could still act as rapporteur, a position which was very important since the rapporteur drafted the conclusions and, in the final analysis, the Committee was often in his hands. The conclusions were just as important as the decisions to invoke article 22. Furthermore, the Committee should not give the impression that it considered only the procedures under articles 20 and 22 to be important. All procedures should have the same weight.

44. Mr. SORENSEN pointed out that under article 19, as the text stood, a member could never act as rapporteur for his own country.

45. The CHAIRMAN suggested that paragraph 3 of the rule relating to article 20 should be retained and included in the rule relating to article 19 as well.

46. Mrs. ILIOPOULOS-STRANGAS asked whether paragraph 1 of the rule relating to article 20 would also be added to the rule relating to article 19.

47. Mr. BURNS said that article 19 involved only the narrow specific circumstance in which nationals of the State party concerned were excluded from the public discussion and, by definition, from serving as rapporteur, since rapporteurs were required to take part in public discussions. As it defined a conflict of interest, paragraph 1 of the rule relating to article 20 was not needed under article 19. Article 20 related to a different process and illustrated the point made by Mr. Gil Lavedra and Mr. Sorensen that the content of the different articles reflected the different procedures.

48. Mr. EL IBRASHI said that paragraph 3 of the rule relating to article 20 should not be added to the rule on article 19 as the Chairman had suggested, since the question it raised would not arise under article 19.

49. The CHAIRMAN, after consulting members as to whether or not they wished to retain the rule relating to article 20 as it stood, with the added paragraph 4, said that with 5 in favour, 3 abstentions and 1 against, there appeared to be no consensus.

50. Mr. BURNS suggested that it might be useful to define what was meant by consensus.

51. Mr. EL IBRASHI said that that question had often been debated at length in United Nations forums. A consensus did not require unanimity of views but existed where there was a majority in agreement plus a number of abstentions. Occasionally a small number of votes against had also been allowed.

52. The CHAIRMAN suggested that the matter should be deferred until the following session to give members more time for thought.

53. It was so agreed.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

54. Mrs. ILIOPOULOS-STRANGAS said at the Chairman's request, she and Mr. Slim had produced a text for discussion but had not been sure whether it should be considered as part of the General Comments or whether it should be seen as a decision which could be sent to States parties if the Committee considered it appropriate. For the time being, it had been entitled "General Comments".

55. Mr. SLIM read out the text:

"General Comments

At its fifteenth session, the Committee against Torture has noted with concern the lengthening list of States parties which have not fulfilled one of their most important obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, namely, to submit initial reports and, every four years, periodic reports.

Out of a total of 91 States parties to the Convention and 140 reports due since 1988, approximately 60 have not yet been submitted, amounting to 42.8 per cent of the total. This means that two fifths of State party reports are still outstanding, which prevents the Committee from following the development of the measures adopted by the States parties to give effect to their commitments under the Convention, in accordance with the provisions of article 19. This constitutes a flagrant and serious breach of the Convention, more especially since, unlike articles 20, 21 and 22, article 19 has no provision for a reservation or declaration.

This practice by States parties also constitutes a violation of the Vienna Convention on the Law of Treaties, article 26 of which upholds the general principle of law 'pacta sunt servanda', expressly providing that 'every treaty in force must be performed by them in good faith'. This practice by some States parties of refraining from complying with their commitments constitutes non-compliance with their obligations, which may result in their responsibility being at issue at the international level, in accordance with general public international law.

Even supposing that these States parties could invoke their internal law as a means of evading this obligation, their argument would be invalid as being contrary to article 27 of the same Vienna Convention, which establishes that 'a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

After discussing this situation, which is disturbing as far as the effective implementation of the Convention is concerned, and taking into account the numerous steps which have already been taken vis-à-vis the States parties concerned, so far without success, the Committee, as the body responsible for the implementation of the Convention, considers that measures to guarantee the effective implementation of the Convention would have to be adopted, as had been done by other treaty bodies,

specifically the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child.

Among the measures envisaged, the Committee is considering the possibility of examining the situation regarding torture and inhuman and degrading treatment in the States parties concerned even if they do not submit their reports, at the latest four years after the date set for each State party.

Furthermore, it has decided to publish in its annual report a list of the States which have not yet fulfilled this obligation."

56. Mr. GIL LAVEDRA said that, as he understood it, the Committee had decided to consider together all initial reports overdue since 1988 and all overdue periodic reports, which totalled approximately 200 or a little over 42 per cent. That figure gave the impression that a very large number of State parties were behind with their reports, when in fact the opposite was true. The text should therefore focus on those States whose initial report was at least four years overdue; the figure would be lower but would have greater impact.

57. The draft provided a good basis for discussion but needed to be more emphatic and marshal more arguments to underline the seriousness of the situation.

58. Mr. SORENSEN observed that it might be better to deal separately with initial and periodic reports. A State party could be examined on the basis of an initial report if only its periodic reports were late.

59. The CHAIRMAN said that further discussion would have to be postponed until the Committee's following session.

60. With regard to a report in English recently received from Finland, if there was no objection, he would designate Mr. Yakovlev as country rapporteur and Mr. Sorensen as alternate rapporteur.

61. It was so decided.

62. The CHAIRMAN thanked the members of the Committee for the efforts they had made over the past two weeks to carry out the tremendous task before them. Thanks to their perseverance, the Committee had tackled many substantive and procedural matters and would thus be able to work with greater efficiency in the future.

The meeting rose at 1.05 p.m.